



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL and MNSDS-DR, FFT**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Each party acknowledged service of the other party's documents. I find service complied with the Act.

Preliminary Issue - Settlement Discussions

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and authorization to retain the security deposit?

Is the tenant entitled to a Monetary Order and return of the deposits?

Is party entitled to reimbursement of the filing fee?

Background and Evidence

The parties submitted substantial conflicting evidence in a lengthy hearing not all of which is referenced in this decision. I refer to only relevant evidence upon which I base my decision.

Nature of Applications

This is a cross application. The landlord applied for compensation for an outstanding utility bill which the tenant had a responsibility to pay. They requested authorization to apply the security deposit to the amount owing.

The tenant denied any responsibility to pay the utility bill. The tenant claimed return of double the security deposit and holding fee.

Each party claimed reimbursement of the filing fee.

Tenancy

The parties submitted a signed tenancy agreement, and agreed it was signed in April 2021.

The parties agreed the tenancy began June 1, 2021, and ended February 14, 2023. Rent was \$2,800.00 a month.

The agreement states the tenant is responsible for the gas and electric utilities.

Security deposit

The parties agreed as follows.

No condition inspection report was conducted on moving out.

The tenant provided his forwarding address in writing on February 16, 2023.

The tenant provided \$1,400.00 as a security deposit.

The tenant stated the additional \$1,000.00 holding fee, discussed below, is also a security deposit. The landlord stated the amount is a payment to hold the unit and should not be returned to the tenant.

Holding Fee

The tenancy agreement states the security deposit is \$1,400.00.

The parties agreed they signed an Addendum to the tenancy agreement, reproduced in part here:

4. An additional sum of \$1,000.00 will be paid by the Tenants at the time of signing the Tenancy Agreement.
5. First month's rent and security deposit is due at the time of signing the Tenancy Agreement.

The parties agreed the tenant paid \$1,000.00 to the landlord when the tenancy agreement was signed in April 2021 in addition to the \$1,400.00 security deposit. The Addendum refers to the \$1,000.00 as an "additional sum", separate from the first month's rent and the security deposit.

I refer to the \$1,000.00 fee as a holding fee, the term used by the landlord.

The landlord testified the parties agreed verbally at the time the Addendum was signed that the holding fee was not returnable. They explained the unit would be empty until the tenant moved in on June 1, 2021, over a month after the signing of the agreement. The landlord said they could have rented the unit to other people effective May 1, 2023 and were effectively losing rent by renting to the tenant.

The tenant claims he expected the money to be refunded at the end of the tenancy. The security deposit is therefore \$2,400.00, all of which is subject to doubling.

Gas Bill

The parties agreed:

1. The tenancy agreement contains a term that gas is not included in the tenancy.
2. The tenant did not create a gas account in his name
3. The gas account was in the landlord's name throughout the tenancy
4. The landlord paid the gas account prorated to \$1,403.37 during the tenancy for which they claimed compensation.

The tenant argued that he did not put the gas account in his name as he did not realize he had to pay for gas. The landlord never mentioned it. The tenant stated the landlord knew or should have known the account was in their name; they should have received overdue bills. The gas provider told him the monthly bills were going to the landlord's residential address. They were responsible to notify the tenant of the oversight. They cannot now claim the full amount owing.

The tenant denied that he is responsible for any more than three months of the gas bill, at \$73.84 monthly (the total amount divided by 19, the number of months in the tenancy).

The landlord stated the gas account was in their name, but the address to which the bills were sent by the provider was an old address and therefore incorrect. Accordingly, they received no overdue notifications. If they had, they would have forwarded the notices to the tenant.

The landlord submitted a copy of an email from the tenant dated February 1, 2023 in which the tenant states, "you can use this email as an agreement that I will pay the outstanding balance owing for the gas bill of \$1500."

Summary

The landlord claimed authorization to apply the security deposit to the gas bill.

The tenant claimed doubling of the security deposit, including the holding fee, of \$2,400.00.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedures states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to each party to prove entitlement to their claim.

Four-Part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Security deposit

I find the tenant is entitled to a doubling of the security deposit because the landlord's right to claim against the deposit was extinguished as they did not carry out the required condition inspection on moving out.

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or

- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on February 14, 2023. The tenant provided a written forwarding address on February 16, 2023. The landlord acknowledged receipt three days later.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

The landlord applied for dispute resolution to claim against the deposit for damages on February 22, 2023, which is within 15 days of the end of tenancy date or the deemed forwarding address receipt date.

However, I find that the landlord extinguished their right to claim against the security deposit for damages, under sections 24 and 36 of the Act, for failure to complete a move-out condition inspection report.

In accordance with section 38(6)(b) of the Act and Policy Guideline 17, I find that the tenant is entitled to receive double the value of their security deposit of \$1,400.00 totalling \$2,800.00.

I grant the tenant an award of \$2,800.00 for the return of the security deposit.

Gas Bill

I find the landlord has met the burden of proof for a claim for reimbursement of the gas bill during the tenancy in the amount of \$1,403.37.

I based my finding on the term in the tenancy agreement that gas was not provided by the landlord as well as the tenant's written acknowledgment in his email of February 1, 2023 that he would pay the amount.

I do not accept as reasonable the tenant's assertion that the landlord should have reminded him to set up the account or should have known he had not done so.

I therefore grant the landlord an award under this heading of \$1,403.37.

Holding Fee

At the start of a tenancy, a landlord can ask for a security deposit (or damage deposit) – it can be no more than half of the first month's rent. A landlord must not charge a fee for accepting, reviewing or processing an application.

Section 7 of the Regulations lists the non-refundable fees that a landlord may charge:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

Accordingly, there is no provision under the Act or Regulation for the landlord to charge a holding fee. The landlord had no authority under the law to collect such a fee.

Accordingly, I grant the tenant an award for the return of the holding fee in the amount of \$1,000.00.

Summary

I grant the landlord an award of \$1,403.37.

I grant the tenant an award of \$2,800.00 and an award of \$1,000.00.

I do not award either party reimbursement of the filing fee in the circumstances.

I grant the tenant a Monetary Order of **\$2,396.63** as follows:

ITEM	AMOUNT
Award to tenant	\$2,800.00
Award to tenant	\$1,000.00
(Less award to landlord)	(\$1,403.37)
TOTAL MONETARY ORDER TO TENANT	\$2,396.63

Conclusion

I grant the tenant a Monetary Order of **\$2,396.63**. This Monetary Order must be served on the landlord. the Order may be filed and enforced in the courts of the province of BC.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 08, 2023

Residential Tenancy Branch